IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14193 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GARASIA PRAKASHBHAI SHAKARABHAI

Versus

D.D.O. SABARKANTHA

Appearance:

1. Special Civil Application No. 14193 of 2004

MR FB BRAHMBHATT for Petitioner No. 1

MR MANISH J PATEL for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 16/12/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his removal/termination order dated 14-10-2004. By the aforesaid order, the District Primary

Education Officer, Sabarkantha-Himmatnagar has passed the order of terminating the services of the petitioner on the ground of alleged misconduct on the part the petitioner. As per the aforesaid order, at the time of getting employment in the department, the petitioner has produced false certificate of Scheduled Tribe. Since the aforesaid certificate is cancelled by the Deputy Commissioner of Tribal Development Department, State of Gujarat, the District Primary Education officer has passed the impugned order terminating the services of the petitioner.

Mr.Brahmbhatt, learned advocate for the petitioner has submitted that at the relevant time, the petitioner was serving since last more than 12 years and without hearing him, the aforesaid order is passed. It is also submitted by him that without following principles of natural justice such order could not have been passed.

On behalf of the respondents, Mr.Manish Patel has submitted that since the original certificate of Scheduled Tribe granted to the petitioner by the department is cancelled by the Deputy Commissioner, Tribal Development department, the services of the petitioners were terminated by the impugned order. He submitted that the said certificate is found to be false as per the order dated 16-9-2004 of the Deputy Commissioner, Tribal Development Department, Gujarat State, Gandhinagar. He further submitted that as the petitioner has obtained employment by submitting false certificate, which is withdrawn by the concerned department, the petitioner is removed from service.

In the aforesaid termination order, it is stated that the petitioner has committed an offence under Section 420 of the Indian Penal Code. However, learned advocate for the petitioner has stated that the petitioner is already acquitted in the criminal trial.

It is required to be noted that the aforesaid order of termination is passed on the ground of alleged misconduct committed by the petitioner, i.e. producing false certificate. It is also not in dispute that before passing the impugned order, the petitioner was not given an opportunity of hearing.

Under these circumstances, this petition is required to be allowed on the limited ground of noncompliance of principles of natural justice before passing the impugned order. In my view, before passing

the impugned order, the petitioner should have been given an opportunity of hearing, therefore, the department is directed to give appropriate opportunity of hearing to the petitioner and thereafter appropriate order may be passed in accordance with law after complying with the principles of natural justice. At the time of passing such order, even withdrawal of the certificate by the Deputy Commissioner, Tribal Development Department, may also be taken into consideration.

Mr.Patel has assured the Court that appropriate opportunity of hearing will be given to the petitioner and fresh order will be passed after complying with the principles of natural justice. He submitted that expeditious action will be taken with regard to the subject matter of this petition.

Accordingly, this petition is allowed only on the aforesaid limited ground and the impugned order is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J.)
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